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13 **UNITED STATES DISTRICT COURT**

14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 MUHAMMED ABDULLAH, et al., as  
16 an individual and on behalf of all others  
17 similarly situated,

18 Plaintiffs,  
v.

19 U.S. SECURITY ASSOCIATES, INC.,  
20 a Corporation, and DOES 1 to 10,  
inclusive,

21 Defendant.

Case No. CV 09-09554 PSG(Ex);  
Case No. CV 15-02366 PSG(Ex)  
*consolidated with Case No. CV-00984  
PSG(Ex)*

(Assigned to Hon. Philip S. Gutierrez)

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

DATE: August 14, 2017

TIME: 1:30 p.m.

CTRM: 6A

Additional Plaintiffs' Counsel

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1 **TO: ALL PARTIES HEREIN AND TO THEIR COUNSEL OF RECORD:**

2       **PLEASE TAKE NOTICE** that on August 14, 2017, at 1:30 p.m. or as soon  
3 thereafter as the matter can be heard in Courtroom No. 6A in the above entitled  
4 courthouse located at 350 W. First Street, Los Angeles, California 90012, Plaintiffs,  
5 on their own behalf, and on behalf of the certified Class, will move for preliminary  
6 approval of a class wide settlement reached with Defendant U.S. Security Associates,  
7 Inc. (“Defendant,” or “USSA”). Defendant does not oppose this Motion.

8       Said Motion shall be based upon this Notice of Motion, the accompanying  
9 Memorandum of Points & Authorities filed herewith, the Declaration of Stanley D.  
10 Saltzman, the Settlement Agreement entered into by the Parties, and upon such  
11 further evidence, both documentary and oral, as may be presented at the hearing of  
12 said motion.

13       Pursuant to the Class Action Settlement Agreement, Exhibit A to the  
14 Declaration of Stanley D. Saltzman (“Saltzman Decl.”), Plaintiffs hereby request that  
15 the Court enter the following order, following hearing on the motion as noticed  
16 above:

17           (1) Preliminarily approving the proposed settlement, and executing the  
18 Proposed Order Granting Preliminary Approval of the Class Action Settlement  
19 (Exhibit 2 to the Saltzman Decl.);

20           (2) Directing that the Class be given notice of the settlement in the form of the  
21 proposed Notice(s) agreed to by the parties, Exhibit 1 and Exhibit 2 to the Settlement  
22 Agreement, which Settlement Agreement is Exhibit A to the Saltzman Declaration,  
23 for the Court’s approval;

24           (3) Scheduling a hearing to consider final approval of the settlement, entry of a  
25 proposed final judgment, and Class Counsels’ application for an award of attorneys’  
26 fees and reimbursement of costs and expenses, as well as Service Awards to the  
27 representative Plaintiffs.

28       // /

1 DATED: June 23, 2017  
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**MARLIN & SALTZMAN, LLP**

By: s/ Stanley D. Saltzman  
Stanley D. Saltzman  
Cody R. Kennedy  
Attorneys for Plaintiffs  
and the Class

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## **MEMORANDUM OF POINTS & AUTHORITIES**

## I. NATURE OF RELIEF SOUGHT

By this unopposed motion, Plaintiffs and the Class(es) certified herein seek preliminary approval of a substantial, non-reversionary settlement of all claims asserted against Defendant in the matter of *Abdullah, et al. v. U.S. Security Associates, Inc.*, ("Abdullah") and in the matter of *Stone v. U.S. Security Associates, Inc.*, ("Stone"). In consideration of the release to be obtained by the Defendant herein, USSA is obligated to pay a total of Twenty One Million dollars (\$21,000,000.00) to the Plaintiffs and the Class(es) certified herein.

After over eight years of extensive litigation, very often involving cutting edge and novel legal theories, the parties have now reached the substantial settlement summarized above. The details of the settlement are set forth in the Class Action Settlement Agreement, Exhibit A to the Declaration of Stanley D. Saltzman (hereinafter “Saltzman Decl.”).

## **II. SUMMARY OF THE CLAIMS**

A. Plaintiffs and the Class Members are/were employed by Defendant as security guards/officers in California between July 1, 2007 and June 30, 2017.

Plaintiffs allege that Defendant utilizes various unlawful policies and practices that violate the California Labor Code as reflected in the class certification order, the most important of which for purposes of this action is its policy of requiring on-duty meal periods at substantially all of its worksites/posts. Plaintiffs also allege several secondary violations, including on-duty rest breaks, unpaid wages for travel time, unpaid reimbursements for travel time and for certain work-related training and certifications, and forfeited vacation wages and derivative penalties under the Labor Code. Plaintiffs allege that Defendant's policies and practices uniformly violate the Labor Code and associated Industrial Welfare Commission Wage Orders, and that Defendant cannot avail itself to the "nature of the work" exception so as to permit on-

1 duty meal periods, which is Defendant's primary defense to the on-duty meal period  
 2 claim. Defendant denies that it violates the law and also contends that it can obtain  
 3 decertification of Plaintiffs' claims.

4 The proposed settlement resolves all claims alleged in this action, including  
 5 two claims which were originally denied certification, but as discussed hereafter have  
 6 been included in the settlement as part of the very strenuous and equally extended  
 7 negotiations leading to the final settlement agreement. Plaintiffs and their counsel  
 8 firmly believe the class members will strongly support this substantial settlement.

### 9 **III. LITIGATION HISTORY**

#### 10 **A. Initial Pleadings**

11 Plaintiff Abdullah filed a putative class action on January 13, 2009, against  
 12 Defendant in the Superior Court of California for the County of Los Angeles, Case  
 13 No. BC405465. Plaintiffs Kimbrough and Aguilar were later added as additional  
 14 plaintiffs. Plaintiffs filed a First Amended Complaint on March 9, 2009, and a Second  
 15 Amended Complaint on December 18, 2009. The Second Amended Complaint  
 16 alleges causes of action for: (1) failure to indemnify for expenses and losses in  
 17 discharging duties in violation of Labor Code section 2802; (2) forfeiture of vacation  
 18 wages in violation of Labor Code section 227.3; (3) failure to provide meal periods  
 19 and authorize and permit rest periods in violation of Labor Code section 226.7; (4)  
 20 failure to keep accurate records in violation of Labor Code section 226; (5) failure to  
 21 timely pay final wages in violation of Labor Code section 203; (6) compelled  
 22 purchases in violation of Labor Code section 450; (7) failure to pay reporting time  
 23 pay in violation of the Industrial Welfare Commission Wage Order; (8) failure to pay  
 24 regular wages for all hours worked; (9) failure to pay minimum wage for all hours  
 25 worked; and (10) unlawful business practices in violation of Business and Professions  
 26 Code section 17200. The *Abdullah* Plaintiffs sought to represent a class of all of  
 27 Defendant's current and former security guard/officer employees who worked in  
 28 California at any time between July 1, 2007 and the present. On December 30, 2009,

1 Defendant removed the action to the United States District Court for the Central  
2 District of California where it was assigned Case No. CV 09-9554-GHK (Ex).

3 A second putative class action was filed several years later against this  
4 Defendant by Plaintiff Juan-Leal Cardenas, on May 31, 2013, in the Superior Court  
5 for the County of Riverside, Case No. RIC 1306430. Plaintiff Cardenas later filed a  
6 First Amended Complaint alleging causes of action for (1) failure to provide rest  
7 breaks; (2) failure to provide meal breaks; (3) failure to pay overtime wages;  
8 (4) conversion; (5); failure to provide accurate wage statements; (6) failure to timely  
9 pay final wages; (7) unfair business practices in violation of Business and Professions  
10 Code section 17200; and (8) civil penalties under the California Labor Code Private  
11 Attorneys General Act of 2004. Cardenas sought to represent a class of current and  
12 former employees who worked for Defendant in California. On May 16, 2014,  
13 Defendant removed the action to the United States District Court for the Central  
14 District of California, where it was assigned Case No. 14-CV-00984. On May 28,  
15 2014 the action was related to the *Abdullah* action.

16 Plaintiff Robert Stone subsequently filed a representative action on January 27,  
17 2015, in the Superior Court for the County of Los Angeles, Case No. BC570451,  
18 alleging claims for: (1) failure to pay compensation due for hours worked; (2) meal  
19 period violations; (3) rest period violations; (4) failure to timely pay final wages in  
20 violation of Labor Code section 203; (5) wage statement and recordkeeping  
21 violations; (6) violation of Labor Code section 2802; (7) violation of Business and  
22 Professions Code section 17203; (8) recovery of civil penalties pursuant to the  
23 California Private Attorney General Act; and (9) wrongful retaliation in violation of  
24 public policy. On March 31, 2015, Defendant removed the action to the United  
25 Stated District Court for the Central District of California, where it was assigned Case  
26 No. 15-CV-02366. On April 2, 2015 the *Stone* action was also related to *Abdullah*.

27 On July 6, 2015, the Court issued an order striking all class allegations from  
28 the operative *Cardenas* and *Stone* complaints, leaving only individual claims and

1 representative California Labor Code Private Attorneys' General Act of 2004  
2 ("PAGA") claims (hereinafter referred to as "the July 6, 2015 Order"). Additionally,  
3 said Order dismissed without prejudice the *Abdullah* Plaintiffs' rest break, off-the-  
4 clock and canceled/reduced shift claims. On July 17, 2015, the Court issued an order  
5 consolidating the *Cardenas* and *Stone* actions for all purposes under Case No.  
6 14-CV-00984 and dismissing 15-CV-2366 without prejudice. On September 9, 2016,  
7 the *Juan-Leal Cardenas v. U.S. Security Associates, Inc.* action was dismissed with  
8 prejudice when Plaintiff Cardenas settled his claims on an individual basis, leaving  
9 *Robert Stone v. U.S. Security Associates, Inc.*, under Case No. 14-CV-00984, as an  
10 individual and PAGA action, still pending under Case No. 14-CV-00984. This  
11 settlement seeks to resolve the *Abdullah* and *Stone* actions.

12       **B. Certification Proceedings**

13       On January 11, 2011, following extensive pre-certification discovery and  
14 equally extensive contested briefing by the Parties, the District Court certified the  
15 *Abdullah* action to proceed as a class action. In Defendant's opposition to  
16 certification, it introduced one hundred and three (103) declarations of class members  
17 in its attempt to defeat certification. Nonetheless, the Court certified the primary  
18 claim alleged in the action, wherein Plaintiffs challenged Defendant's "on-duty" meal  
19 policy, as well as six secondary and/or derivative claims:

20       Meal Break Subclass. A Subclass of all of Defendant's past and present  
21 California Security Guard/Officer employees who worked more than six hours  
22 and were not provided a checked-out meal break in any work shift from July 1,  
23 2007 to the present, and who were not compensated for such on-duty meal  
24 break(s) pursuant to California Labor Code §226.7(b).

25       Uniform Maintenance Subclass. A subclass of all of Defendant's past and  
26 present California Security Guard/Officer employees whom Defendant  
27 required to maintain a uniform during the period from July 1, 2007 to the  
28 present, and who were not provided reimbursement.

1           Mileage Expenses Subclass. A subclass of all of Defendant's past and present  
2 California Security Guard/Officer employees who were not reimbursed for the  
3 mileage costs of operating a personal vehicle in carrying out work-related duties  
4 during the period from July 1, 2007 to the present.

5           Mandatory Training, Licensing, and Certifications Subclass. A subclass of all of  
6 Defendant's past and present California Security Guard/Officer employees who  
7 were not reimbursed for mandatory training, licensing, and certifications during  
8 the period from July 1, 2007 to the present.

9           Vacation Subclass. A subclass of all of Defendant's former California Security  
10 Guard/Officer employees whose employment ended between July 1, 2007 to the  
11 present, and whose employment totaled fewer than 2,080 hours and who were  
12 not paid at the end of their employment any vested, unused vacation wages.

13           Wage Statements Subclass. A subclass of all of Defendant's past and present  
14 California employees who worked as Security Guard/Officers from July 1, 2007  
15 to the present, who, due to the violations claimed in one or more of the other  
16 certified subclasses, received an inaccurate itemized wage statement.

17           Waiting Time Subclass. A subclass of all of Defendant's California employees  
18 who worked as Security Guard/Officers from July 1, 2007 to the present, who  
19 were not paid wages within 72 hours of their termination and who qualify as a  
20 member of one of the other certified subclasses.

21           Following certification, Defendant then initiated its attack on the Order. First, it  
22 moved for reconsideration of the Court's certification order. That motion, after yet  
23 further full and complete briefing, was denied by the District Court.

24           Thereafter, Defendant filed a petition for leave to appeal the Order granting  
25 certification, as to the primary "on-duty" meal break claim, which petition was  
26 successful. The Parties then engaged in full merits briefing of the certification order  
27 as to the on duty meal break issue, and then ultimately the Ninth Circuit heard oral  
28 argument on the appeal. The result of this all-out battle over certification was the

1 published decision of the Ninth Circuit, upholding the certification of the on-duty  
 2 meal break claim, in *Abdullah, et al. v. U.S. Security Associates, Inc.*, 731 F.3d 952  
 3 (9th Cir. 2013). Defendant then unsuccessfully sought *en banc* review.

4 Still seeking to undo the order certifying the primary claim in the case,  
 5 Defendant then petitioned for certiorari to the United States Supreme Court. After  
 6 briefing, that request was also denied. (*Id., cert. denied*, 135 S.Ct. 53 (Oct. 6, 2014)).  
 7 The resulting final decision of the Ninth Circuit was not only critical to this case, but  
 8 to the bench and bar generally. In less than three years, the decision has been cited in  
 9 more than one hundred and forty decisions.

### 10 C. Post Certification Proceedings

11 Even prior to moving for certification, the parties had engaged in extensive  
 12 discovery efforts, both as to certification and merits issues relevant to Defendant's  
 13 wage policies and practices and the class' potential damages. Class Counsel also  
 14 reviewed extensive production of various databases and numerous hard copy payroll  
 15 records consisting of days/time worked and payroll issues. (Saltzman Decl. ¶ 18).  
 16 Additionally, and still prior to certification, plaintiffs engaged the assistance of an  
 17 expert witness to aid in the data and records review. Each of the proposed class  
 18 representatives in the *Abdullah* action also had their depositions taken.

19 After the Ninth Circuit's decision in *Abdullah* had issued, and multiple  
 20 settlement entreaties had failed to resolve the case, the matter was then on a clear path  
 21 to trial. At that time, Class Counsel associated in yet another class action law firm,  
 22 Marlin & Saltzman LLP, which firm has actual class action trial experience, having  
 23 participated in five class action trials. (*See* Saltzman Decl. ¶ 48). With this additional  
 24 class action expertise, Class Counsel began to move forward systematically towards  
 25 trial, while keeping the door open to resolution if appropriate.

26 But first, following the Mandate from the Ninth Circuit, and Court's grant of  
 27 the Class' request that the class period be extended forward to include the two plus  
 28 years of the appeal, notice of the certification of the class was mailed to all current

1 and former guards employed by Defendant in California from July 1, 2007, until  
 2 June 30, 2015, a group numbering just over 15,000.<sup>1</sup> Out of such a large class, only  
 3 thirty putative class members elected to opt out of the class.

4 Thereafter, the parties continued with in-depth merits discovery. This included  
 5 fourteen class member depositions, seven depositions of Defendant's statewide  
 6 management personnel, multiple (four) expert witness depositions of Plaintiffs' and  
 7 Defendant's expert witnesses within the time frame allowed by the District Court in  
 8 its Pre-trial Scheduling Order, further significant production of classwide payroll and  
 9 time and attendance records, and numerous client contracting records and documents  
 10 by Defendant, and a further deposition of Class Representative William Kimbrough.  
 11 (Saltzman Decl. ¶ 18). Finally, after the close of all of this discovery, including  
 12 expert discovery, and within the time limits established by the Court's pre-trial  
 13 deadlines, the *Abdullah* Plaintiffs and Defendant filed joint cross motions for  
 14 summary judgment, again as to the primary issue of the on-duty meal breaks.

15 Additionally, Defendant also filed a motion for decertification of the class.

#### 16 **D. Mediation Proceedings**

17 After the above-noted dispositive summary judgment and decertification  
 18 motions were fully briefed, and pending for hearing, and while the parties continued  
 19 to prepare themselves for a class action trial to take place in 2017, the parties  
 20 continued to discuss the possibility of resolution. Ultimately, they agreed to attend  
 21 one final mediation session before well-known class action mediator Hunter Hughes,  
 22 Esquire, of Atlanta, Georgia, on November 22, 2016.

23 Substantial time was expended by Class Counsel and defense counsel prior to  
 24 the mediation to clarify the accuracy and depth of the information provided. In the  
 25 weeks leading up to the mediation, counsel were in regular contact over the many  
 26

---

27 <sup>1</sup> Following the Ninth Circuit's remand to the trial court, the Court extended the class period in  
 28 *Abdullah* until June 30, 2015 as reflected in the July 6, 2015 minute order.

1 details of the case which would be “in play” at the mediation, all while each party  
 2 was preparing its extensive dispositive motions seeking summary judgments in their  
 3 favor, and while Defendant prepared its motion for decertification of the *Abdullah*  
 4 class. (Saltzman Decl. ¶¶ 19-21). This extensive, and cooperative, exchange of  
 5 information was ultimately a key factor in the negotiations which ensued.

6 Nonetheless, the parties were again stymied at mediation and unable to resolve  
 7 the case. However, Mr. Hughes continued reaching out to the parties over the  
 8 ensuing months, and eventually the Parties agreed to the terms of the Settlement  
 9 Agreement now before the Court, to resolve the *Abdullah* action, plus the  
 10 representative wage claims under PAGA raised in the *Stone* action. (Saltzman Decl.  
 11 ¶¶ 23-26)

#### 12 **IV. SUMMARY OF THE SETTLEMENT**

13 As more fully explained below, the parties believe that the proposed settlement  
 14 meets the criteria for preliminary approval which are set forth in the *Manual for*  
*15 Complex Litigation*, 4th Ed., and that it is well within the range of what would be fair,  
 16 reasonable, and adequate in this case. Thus, the *Abdullah* and *Stone* Plaintiffs request  
 17 that preliminary approval of the settlement be granted.

18 Specifically, the parties have agreed to a **non-reversionary** gross settlement in  
 19 the amount of **\$21 million**. The settlement will result in the Class Members receiving  
 20 substantial sums, and represents an outstanding resolution of a heavily contested eight  
 21 year long lawsuit. Notably, the class members **will not be required to complete and**  
**submit any claim forms in order to receive their share of the settlement proceeds.**  
 22 All participating class members (*i.e.*, those who do not elect to opt out of the  
 23 settlement) will have a settlement check mailed to them once the settlement is final.

25 The parties have agreed on the form of the Notices of Class Action Settlement,  
 26 to be mailed via first class mail to all the Class Members to inform them of the terms  
 27 of the Settlement. The proposed Notices of Class Action Settlement are attached as  
 28 Exhibit 1 and 2 to the Class Action Settlement Agreement, Exhibit A to the Saltzman

1 Decl. The parties have further agreed to the designation of CPT Group, Inc. as the  
2 Settlement Administrator, and other terms that are necessary and customarily  
3 provided by such class action notices.

4 **A. Summary of Settlement Terms**

5 The terms of the settlement are set forth in the Settlement Agreement attached  
6 to the Saltzman Decl. as Exhibit A thereto. The principal terms are:

- 7 a. Defendant shall pay twenty one million dollars (\$21,000,000.00).
- 8 b. After deduction for all approved payments for settlement administration  
9 costs, awards of attorneys' fees and costs, Service Awards to the named  
10 plaintiffs, agreed payroll tax payments, the substantial PAGA payment,  
11 all remaining funds will be paid to the Class Members with absolutely no  
12 right of reversion as to any of the funds.
- 13 c. There are two different groups of Settlement Class Members: (1) those  
14 security guards whom were provided notice of the class action of the  
15 *Abdullah* action following the successful certification motion and its  
16 affirmance by the Ninth Circuit and who did not opt-out of the *Abdullah*  
17 action upon receiving such notice ("Original Class Members"); and (2)  
18 those security guards who did not fall within the Original Class Member  
19 definition because they had not yet been employed by Defendant as of  
20 the Notice mailing in 2015 ("Newly Added Class"). (*See* Section I  
21 "Definitions" at ¶¶ R, T).
- 22 d. The Original Class Members will be part of the "Off the Clock" and  
23 "Rest Break" Subclasses<sup>2</sup> pursuant to the settlement so long as they do  
24 not now submit a request for exclusion from those subclasses. (*See*

---

25  
26 <sup>2</sup> The parties seek to have the Court certify the "Off the Clock" and "Rest Break" Subclasses for  
27 purposes of settlement, and thus, the parties stipulate to vacate the Court's July 6, 2015 Order  
28 wherein the Court permitted the dismissal of these claims without prejudice. (Settlement at ¶¶ 10 and  
11).

1                   Section I “Definitions” at ¶¶ R, T, U, BB; Section III “Terms of  
2                   Settlement” at E “Certification of the Rest Period & OTC Subclasses”).

3                   e. The Newly Added Class members will release the Class Released  
4                   Claims, including the Subclass claims, if they do not submit a request for  
5                   exclusion from the entire case when Notice is sent out following  
6                   preliminary approval. (*Id.*)

7                   f. The Class Released Claims are defined as: “All wage and hour claims  
8                   that were plead or could have been plead under the Labor Code, Wage  
9                   Orders or federal, state or local wage and hour laws, including the Fair  
10                  Labor Standards Act (“FLSA”), based on the facts alleged in the  
11                  *Abdullah* Second Amended Complaint and the *Stone* Complaint,  
12                  including claims for: (a) any vested, unused vacation wages; (b) any meal  
13                  break violations, including non-compliant on-duty meal breaks; (c) any  
14                  unreimbursed work-related expenses, including, but not limited to,  
15                  expenses for mandatory training, licensing and certifications,  
16                  unreimbursed expenses for operating a personal vehicle or using a  
17                  personal cellular phone while carrying out work-related duties, and  
18                  unreimbursed expenses for uniform maintenance; (d) unpaid overtime  
19                  wages; (e) failure to pay minimum wages or regular wages; (f) unpaid  
20                  wages due to “off-the-clock” work (during the Subclass Period only); (g)  
21                  rest break violations (during the Subclass Period only); (h) receipt of  
22                  inaccurate itemized wage statements or record-keeping violations;  
23                  (i) waiting-time penalties due to the failure to pay wages within 72 hours  
24                  of termination; (j) all claims under PAGA that could have been premised  
25                  on the claims, causes of action or legal theories described above in (a)-  
26                  (i); (k) all claims for unfair business practices under California Business  
27                  & Professions Code section 17200 *et seq.* that could have been premised  
28                  on the claims, causes of action or legal theories of relief described above

1           in (a)-(i); (l) conversion; and (m) all damages, including, but not limited  
2           to, liquidated damages, civil and statutory penalties, interest and other  
3           amounts recoverable under said claims, causes of action or legal theories  
4           of relief identified above in (a)-(l) (collectively, the “Released Claims”).  
5           The period of the Released Claims shall extend to the limits of the Class  
6           Period. The Parties agree that the judgment, and release of claims  
7           provided herein, shall have *res judicata* effect. The definition of Released  
8           Claims shall not be limited in any way by the possibility that Plaintiffs or  
9           Settlement Class Members may discover new facts or legal theories or  
10          legal arguments not alleged in the operative pleadings in the Actions but  
11          which might serve as an alternative basis for pursuing the same claims,  
12          causes of action, or legal theories of relief falling within the definition of  
13          Released Claims.”

- 14       g. The Release of Claims Period is “the period from July 1, 2007 through  
15          June 30, 2017, for the originally certified and settled claims, and the  
16          period from July 1, 2013 through June 30, 2017, for the Off the Clock  
17          and Rest Break sub-class claims.” (See Section I “Definitions” at ¶ DD).
- 18       h. The parties have selected CPT Group, Inc. as the Settlement  
19          Administrator, which has submitted a “not to exceed” bid for all services  
20          in the amount of \$120,000.00. (Saltzman Decl. ¶ 28).
- 21       i. The Parties have agreed to two separate forms of the Notice of Class  
22          Action Settlement (“Notice”), copies of which are attached to the  
23          Settlement Agreement as Exhibits 1 and 2 thereto.
- 24       j. The Settlement Administrator will calculate the total Compensable  
25          Work-shifts for all Settlement Class Members as a percentage of each  
26          Settlement Class Member’s number of work-shifts during the Class  
27          Period and Subclass Period as against the total number of work-shifts by  
28          all the Settlement Class Members.

- k. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: one-quarter (25%) as wages; one-quarter (25%) as penalties; and one-half (50%) as interest. (*See* Section III “Terms of Agreement” at “Individual Settlement Payments” at ¶ 30). This is reflective of the long length of the litigation, leading to larger than normal possible interest, if it was obtained.
  - l. Class Members shall have 30 days in which to request exclusion or object to the settlement. (*See* Section I “Definitions” at ¶ GG). If they do not affirmatively opt out, then their settlement share will be mailed to them following final approval. Thus, participation could not be easier.
  - m. Counsel for the Class shall apply to the Court for an award of fees not to exceed one-third of the total non-reversionary settlement payment, plus reasonable costs and expenses, not to exceed \$150,000. (*See* Section III “Terms of Agreement” at “Class Counsel Award” at ¶ 35).
  - n. The *Abdullah* Plaintiffs will seek Service Awards in the amount of \$15,000.00 each, and the *Stone* PAGA Representative Plaintiff will seek an award in the amount of \$5,000.00. (*See* Section III “Terms of Agreement” at “Class/PAGA Representative Service Award” at ¶ 34).
  - o. The settlement allocates \$500,000.00 to resolve the PAGA claims, with 75% of that amount to be paid to the LWDA and the remaining 25% to be added to the Net Settlement Fund. (*See* Section III “Terms of Agreement” at “PAGA Payment” at ¶ 38).

## B. Settlement Value

This settlement, as is true of literally every settlement ever reached, represents a compromise between the two sides, which have battled through these issues for the last eight years. As the record reflects, the seemingly never-ending litigation and appellate proceedings enabled the Defendant to pursue literally every defense legally available to it. This is hardly surprising, since the primary claim in the case

1 challenged its use of “on-duty” meal breaks throughout its client roster.

2       Nonetheless, following this extensive workup of the case, and the equally  
 3 extensive utilization of experts in connection with the certification briefing and the  
 4 preparation for trial, both sides were able to quantify the claims presented, the  
 5 relative strengths and weaknesses thereof, and then, considering all that information,  
 6 reach the settlement now before the Court.

7       In that regard, the following information presents a fair and reasonable analysis  
 8 of the claims presented, valued and settled, both as to the liability and damages:

9           1. Meal Period Claim:

10       As stated, this was the primary driving factor in the case. In preparing for the  
 11 mediation, Class Counsel worked with their expert, Sean Chasworth, of Phillips,  
 12 Fractor & Company, to prepare a damages model based upon extensive review of the  
 13 data produced, deposition testimony, and the governing law as viewed through  
 14 Plaintiffs’ perspective. In addition, Plaintiffs also had to consider Defendant’s view  
 15 of those damages in order to be able to approach a possible resolution. Thus, while  
 16 Plaintiffs estimated that the total damages possible from the primary claim could  
 17 exceed \$60mm, they also recognized that Defendant would view that same damage  
 18 claim as representing no more than \$38mm dollars of exposure to it, due to its claim  
 19 that interest did not apply to this meal break claim. The mediator at the fourth and  
 20 final mediation which led to the settlement before the Court opined that Defendant’s  
 21 view of the damage claim was quite reasonable, and could prevail at trial, even if the  
 22 case was successfully tried on liability.<sup>3</sup> (Saltzman Decl. ¶ 38).

23       The meal break claim, of course, was premised on the allegation that

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24  
 25       <sup>3</sup> As Defendant asserts, the law as to whether interest is recoverable for meal period premiums owed  
 26 is not settled at this time. *See Kirby v. Immoos Fire Protection, Inc.*, 53 Cal. 4th 1224 (2012)  
 27 (holding that an action to recover meal period premiums are not an action to recover wages within  
 28 Cal. Lab. Code § 218.5). Thus, if the failure to pay meal period premiums is not a failure to pay  
 wages, then pre-judgment interest might not be recoverable, thus triggering the much lower number.

1 Defendant’s guards were subject to an on-duty agreement governing the Defendant’s  
2 single-guard staffing model, and thus, all such guards were damaged unless and until  
3 Defendant proves otherwise, as is its right when claiming an offset from the damages  
4 total. Thus, even at trial, faced a continued challenge to certification based on a claim  
5 that not all the guards were subjected to the same policy.

6 Thus, for settlement purposes and allowing for the uncertainties and vagaries of  
7 trial, this claim could be reasonably valued at 75% of its \$38mm value, yielding a  
8 value for settlement negotiation purposes of \$28,500,000.00. (Saltzman Decl. ¶ 38).

## 2. Rest Break Claim:

The rest break claim was not originally certified by the Court. However, as the case neared mediation/trial, Plaintiffs advised the Defendant that they would be renewing the request for certification of this claim, based on the recent decision of the California Supreme Court in *Augustus v. ABM Security Service* (2016) 2 Cal. 5<sup>th</sup> 257. Certification of this claim for settlement purposes is discussed, *infra*, in Section X.

Accordingly, as a condition of the settlement negotiations, the Parties included this claim in the mediation, and valued that claim for settlement purposes, albeit limited to the four years going back from the proposed date of preliminary approval. For purposes of this settlement, and going back four years, this claim at its 100% valuation, could be worth as much as \$15,200,000.00. Allowing for the fact that it had not been certified on the first attempt, and that the facts to support it are not as clear as those supporting the meal period claim, the claim could reasonably be discounted by a factor of 50%, yielding a value for settlement negotiation purposes of \$7,600,000.00. (Saltzman Decl. ¶ 39).

### 3. Reimbursement Claims for Uniform Maintenance, Mandatory Training, Licensing & Certification

Defendant did not reimburse for the costs of maintaining a uniform. Plaintiffs obtained certification of this claim. However, as trial prep discovery went on, Plaintiffs learned that this claim even if valid had no more than nuisance value and

1 thus for settlement purposes Plaintiffs had to assign no more than a nominal value to  
 2 the claim. Defendant's witnesses testified quite credibly that it paid for any required  
 3 training, but that it did not pay for discretionary training courses, thus essentially  
 4 complying with the law. Numerous guards contacted by counsel in order to try to  
 5 verify this confirmed this to be true. As for the mileage claim which also obtained  
 6 certification, Defendant again credibly testified that very few guards were ever asked  
 7 to use their own vehicles and that in fact the most common occurrence was that once  
 8 a guard was "posted" for the day, he or she stayed at the one site, thus rarely  
 9 triggering the need to drive while on company time. Uniform reimbursement  
 10 occurrences also turned out to be rare events. (Saltzman Decl. ¶ 40).

11 Thus, these three reimbursement claims together were valued at no more than  
 12 two million dollars for settlement purposes, assuming that certification of the claims  
 13 could survive, or that they could overcome the threatened motion for partial summary  
 14 judgment. A reasonable value for settlement negotiation purposes would therefore be  
 15 in the \$1,000,000.00 range. (Saltzman Decl. ¶ 41).

16       4. Off-the-Clock Claim:

17 Plaintiffs alleged that Defendant is liable for failing to pay for worktime  
 18 spent by Class Members to travel to/from worksites/posts during their shifts. As was  
 19 learned during the post-certification discovery, this was simply a rare occurrence,  
 20 although to the extent that it did occur, it could be fairly certified and valued. This  
 21 claim was denied certification, but for settlement purposes it is certainly appropriate  
 22 to re-visit the claim, value it (modestly) and settle it along with the other claims. In  
 23 that vein, Plaintiffs' Counsel estimate that approximately 20% of the Class actually  
 24 drove to/from different worksites/posts during their shifts, approximately four times  
 25 per week, so that for the 2,300 or so guards active at any one time, this claim would  
 26 project a possible value of approximately \$1,181,648.00, arrived at as follows: 20%  
 27 of 2,300 guards, or 460 guards x four times per week = 1,840 OTC events per week,  
 28 x 52 weeks = 95,680 events of OTC each year, x 4 years = 382,720 events of OTC

1 for the four year look back period, x 30 OTC minutes per event = 11,481,600 total  
2 OTC minutes, divided by 60 minutes to yield hours of OTC time = 191,360 hours, x  
3 9.50 per hour = \$1,817,920.00. This is full value, so an appropriate value for  
4 settlement negotiation purposes would be about 65% for this claim, or \$1,181,648.00.  
5 (Saltzman Decl. ¶ 42).

6       5. Vacation Claims

7 Plaintiffs alleged that Defendant maintained vacation policies and practices  
8 that resulted in a forfeiture of vacation wages to employees who were separated from  
9 employment with less than 2,080 hours of employment and were not paid a pro-rata  
10 portion of a “retention bonus,” which Plaintiffs contend is actually vacation wages,  
11 and which is equivalent to forty hours of pay for 2,080 regular hours worked. Post-  
12 certification discovery was even more harsh on this claim. Discovery and testimony  
13 confirmed that this claim simply was not likely to exist, such that while it is being  
14 settled and released, it could only be valued at a nominal \$100,000.00 level for the  
15 entire class period. (Saltzman Decl. ¶ 43).

16       6. Waiting Time Claims (Labor Code § 203)

17 Absent a wage claim to tie this claim to, it does not exist. The strongest claims  
18 in this case were the meal and rest break claims, neither of which generate a wage to  
19 which a § 203 claim could be tethered. The vacation claim largely dissipated over the  
20 course of the post-certification discovery, so there was simply no logical way to  
21 project a § 203 waiting time claim. It was therefore not valued, and within this case  
22 is subject to release and dismissal.

23       7. PAGA Claim

24 PAGA claims are amongst the most difficult to evaluate for settlement  
25 valuation purposes. This is because there are so many impediments to the actual  
26 entry of the civil penalty permitted in the act. First, defendants regularly argue that  
27 no penalty can accrue until such time as a court has actually found a violation to  
28 exist, and then only after that finding can the penalties accrue. Here, there has yet to

1 be any such finding. Additionally, § 2399(e)(1) affords the trial court discretion to  
 2 lower the penalty, when the Labor Board would have that discretion, and also, under  
 3 § 2399(e)(2), whenever an award would be “unjust, arbitrary and oppressive, or  
 4 confiscatory.” It is often argued by defendants that in situations where an award of  
 5 damages has already been found, that the imposition of yet another penalty under the  
 6 PAGA would necessarily be unjust, *etc.*, such that it should not be imposed. Many of  
 7 the courts to address this penalty award have so found, and have exercised broad  
 8 discretion to dramatically limit such awards. Thus, while “PAGA only” claims are  
 9 viewed differently, there are severe limitations in cases where damages are already  
 10 “in play” based on underlying wage violation claims.

11       Thus, while the PAGA calculation herein for approximately 2,300 normally  
 12 staffed guards would easily exceed \$35MM, the likelihood of that sum ever being  
 13 awarded, or anything even close to it where, as here, the underlying “premium pay”  
 14 sums are properly sought, is extremely slim. Accordingly, for settlement purposes,  
 15 that penalty award was reduced to the \$3.5MM range, and then negotiated for various  
 16 risks, as were all the other claims, to the sum of \$500,000.00, a still very large PAGA  
 17 award in comparison to those “normally” presented to the courts for approval. In  
 18 fact, it is highly uncommon to see PAGA resolutions in excess of \$100,000.00.

19 Total Value of the Claims for Negotiation Purposes:

20       Based on the detailed analysis of the claims as presented above, and as further  
 21 set forth in the Saltzman Declaration, when approaching the last and final attempt to  
 22 resolve the claims at mediation, Plaintiffs viewed the total value of all the Claims as  
 23 being \$41,654,408.00, including the PAGA amount at the reduced sum of  
 24 \$500,000.00. Reasonably discounting those claims at mediation, to allow for a  
 25 settlement to occur, thus obviating yet years more of ongoing litigation, obtaining  
 26 certainty of recovery and still obtaining a strong percentage of the total damages in  
 27 play at the mediation, the case settled for the agreed sum of \$21,000,000.00. This  
 28 represents 50.4% of the total reasonable exposure, a truly outstanding result in any

1 case, and a percentage rarely achieved in employment class action litigation. It was  
 2 only possible here due to the never-ending persistence of Class Counsel and the  
 3 Representative Plaintiffs, who passed up three prior opportunities to settle the case  
 4 for lesser percentages, and kept working towards trial, when this settlement was  
 5 finally achieved. (Saltzman Decl. ¶ 47).

6 Estimated Average Individual Settlement Payment

7 On a very elementary level, if all Class Members do not opt of the settlement,  
 8 the basic average estimated individual settlement across the entire class would be  
 9 approximately \$1,235.00, gross, before all deductions. (\$21,000,000 divided by  
 10 17,000 guard class members).

11 However, a far more relevant and refined way to consider average payments, in  
 12 order to adjust for the large turnover rate which is so typical in security guard  
 13 operations (here the turnover rate was as high as 50% some years), is to analyze the  
 14 average payments tied to what is sometimes referred to as the number of “full time  
 15 equivalent” (or FTE) employees. This is determined by analyzing the employment  
 16 data to discern how many class member employees were working for the Defendant  
 17 **at any given time** during the class period – the so-called “snapshot” of employee  
 18 numbers. Thus, if there had been no turnover whatsoever (a difficult thing to imagine  
 19 in the security guard world), the data in this case reveals that there were normally  
 20 about 2,300 workers holding the class positions at any given time during the class  
 21 period. Therefore, if they all worked throughout the class period they would all  
 22 receive a full time equivalent settlement award. Analyzed this way, the average  
 23 settlement amount to be received herein on a “per position” FTE basis would be  
 24 \$9,130.00 (\$21MM divided by 2,300 employees). Thus, any employees who happen  
 25 to have remained with USSA as class member guards throughout this class period,  
 26 and would thus have a full class member share of workshifts, would stand to receive a  
 27 gross settlement allocation of \$9,130.00 each. That is a truly extraordinary sum, and  
 28 is the most relevant manner by which to weigh the recovery.

1   **V. THE SETTLEMENT CLEARLY MEETS, AND EXCEEDS, THE**  
 2   **STANDARDS FOR PRELIMINARY APPROVAL**

3       The court has broad discretion to grant approval of class action settlements,  
 4 and should do so where the proposed settlement is “fair, adequate, reasonable, and  
 5 not a product of collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
 6 1998). Court approval involves a two-step process, with the Court first determining  
 7 whether a proposed class action settlement deserves preliminary approval so that  
 8 notice of the same can be disseminated, and then after notice is given to Class  
 9 Members, whether final approval is warranted. *Manual of Complex Litigation*,  
 10 *Fourth*, § 21,632 (2004); *see also Hanlon, supra*, at 1019. At the preliminary  
 11 approval stage, the Court need only “determine whether the proposed settlement is  
 12 within the range of possible approval.” *Gatreaux v. Pierce*, 690 F.2d 616, 621 n.3  
 13 (7th Cir. 1982). Ultimately, a class action should be approved if “it is fundamentally  
 14 fair, adequate and reasonable.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,  
 15 1276 (9th Cir. 1992). There is a “strong initial presumption that the compromise is  
 16 fair and reasonable.” *Hanlon, supra*, at 1019. Courts strongly favor settlement,  
 17 particularly in complex class actions. *See, e.g., Class Plaintiffs*, 955 F.2d at 1276.

18       Although at this stage of preliminary approval, the Court is not expected to  
 19 engage in the more rigorous analysis that is required for final approval (*see Manual*  
 20 *for Complex Litigation, Fourth*, § 22.661 at 438 (2004)), the Court’s ultimate fairness  
 21 determination will include balancing several factors, amongst the following:

22       ... the strength of plaintiffs’ case; the risk, expense, complexity and  
 23 likely duration of further litigation; the risk of maintaining class  
 24 action status throughout the trial; the amount offered in settlement;  
 25 the extent of discovery completed, and the stage of the proceedings;  
 26 the experience and views of counsel; the presence of a governmental  
 27 participant; and the reaction of the Class Members to the proposed  
 28 settlement.

29       *Officers for Justice v. Civil Service Comm. of City and County of San Francisco*, 688  
 30 F. 2d 615, 625 (9th Cir. 1982). Not all of the above factors apply to every class action

1 settlement, and one factor alone may prove determinative in finding sufficient  
 2 grounds for court approval. *Nat'l Rural Telecommunication Cooperative v. Directv, Inc.*, 221 F.R.D. 523, 525-26 (C.D. Cal. 2004).

4 Based on the detailed and extensive presentation set forth above, including the  
 5 claim settlement evaluations, it is submitted that this settlement not only satisfies the  
 6 criteria for preliminary approval, but also that this Court should be comfortable that it  
 7 will easily satisfy the criteria for final approval at the appropriate time.

8       **A. The Settlement Resulted from Arm's-Length Negotiations.**

9       The Ninth Circuit has long supported settlements reached through arms' length  
 10 negotiation by capable opponents. The primary reason for deferring to such  
 11 settlements is the experience of counsel and the participation of a neutral (in this case,  
 12 several different leading neutrals), both of which factors are present here:

13       ...the court's intrusion upon what is otherwise a private consensual  
 14 agreement negotiated between the parties to a lawsuit must be limited  
 15 to the extent necessary to reach a reasoned judgment that the  
 16 agreement is not the product of fraud or overreaching by, or collusion  
 17 between, the negotiating parties, and that the settlement, taken as a  
 18 whole, is fair, reasonable and adequate to all concerned.

19       *Id.* at 965, quoting *Officers for Justice, supra*, at 625.

20       The *Rodriguez* court "put a good deal of stock in the product of an arms-length,  
 21 non-collusive, negotiated resolution, and [has] never prescribed a particular formula  
 22 by which that outcome must be tested." *Rodriguez, supra*, at 965. As the Court  
 23 explained, "In reality, parties, counsel, mediators, and district judges naturally arrive  
 24 at a reasonable range for settlements by considering the likelihood of a plaintiffs' or  
 defense verdict, the potential recovery, and the chances of obtaining it, discounted to  
 present value." *Id.* at 965 (citations omitted).

25       The proposed settlement here is the product of arm's-length negotiations  
 26 between the Parties. In fact, resolution was not reached until the fourth full mediation  
 27 session, such that it can clearly be said that the Parties thoroughly thrashed out the  
 28 issues over the course of numerous mediations, over a several year period. The initial

1 two prior mediations were held before Mark Rudy, Esquire, one of California's  
2 foremost mediators in the area of employment class actions. The first of these  
3 mediations occurred prior to Plaintiffs filing their motion for certification. The second  
4 took place after the district court had granted certification, but before the appeal of  
5 that ruling. The third mediation was supervised by Hunter Hughes, Esquire, another  
6 prominent nationwide class action mediator, and was held following the issuance of  
7 the Ninth Circuit's decision, but while the Defendant's petition for certiorari was  
8 pending before the U.S. Supreme Court. In effect, mediations were attempted at  
9 every logical and critical juncture of the case history. (Saltzman Decl. ¶¶ 22-24).

10 As discussed above, Plaintiffs conducted significant investigation of the facts  
11 and law during the prosecution of this action, including: (1) review and analysis of  
12 critical documents; (2) filing and winning the certification motion; (3) defending the  
13 certification order in *Abdullah* at the Ninth Circuit and opposing Defendant's petition  
14 for *en banc* review of the panel decision and subsequent petition for certiorari with  
15 the Supreme Court; (4) deposing numerous Defendant witnesses over the course of  
16 the entire litigation; (5) attending and defending fourteen class member depositions  
17 across California, which required committing no less than six plaintiff lawyers for  
18 this phase of the discovery process, including numerous day and over-night trips  
19 throughout California; (6) reviewing detailed employment data, payroll data, and  
20 numerous other relevant data sets; (7) retention of experts for the purpose of  
21 conducting a comprehensive analysis of the data obtained, and to assist with  
22 providing a damages analysis prior to the most recent mediation; (8) deposing  
23 Defendant's three expert witnesses; (9) filing and opposing cross motions for  
24 summary judgment; (10) attending four separate mediations before well regarded  
25 class action mediators; and (11) negotiating the terms of the settlement and preparing  
26 all documents relevant to its approval, among other things. (*See generally*, Saltzman  
27 Decl., throughout). Plaintiff's counsel also considered the strengths and weaknesses  
28 of their case, and of course thoroughly examined all of Defendant's defenses. This

1 settlement of \$21,000,000.00 represents an outstanding recovery for the class.

2        Ultimately, on the fourth attempt, the parties were able to negotiate this  
3 settlement, taking into account the costs and risks of continued litigation. “A  
4 presumption of fairness, adequacy, and reasonableness may attach to a class  
5 settlement reached in arm’s length negotiations between experienced, capable counsel  
6 after meaningful discovery.” *H&R Block Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d  
7 96, 116 (2d Cir. 2005). Plaintiffs have also taken into account the uncertainty and risk  
8 of further litigation, and the difficulties and delays inherent in such litigation.

9        Based on the foregoing, Plaintiffs and their counsel have determined that the  
10 settlement set forth in the Agreement is fair, adequate and reasonable, and is in the  
11 best interests of Plaintiffs and the Settlement Class. (Saltzman Decl. ¶ 47). Defendant  
12 also has expended substantial amounts of time, energy and resources in connection  
13 with the litigation, and unless this settlement is approved, will be forced to continue  
14 to do so. Defendant has, therefore, agreed to settle in the manner and upon the terms  
15 set forth in the Settlement Agreement.

16        **B. The Settlement Has No Obvious Deficiencies.**

17        The proposed settlement has no obvious deficiencies. Under the terms of the  
18 settlement, Defendant will make a single, non-reversionary payment of  
19 \$21,000,000.00. The settlement provides no preferential treatment for Plaintiffs or  
20 other Class Members. Plaintiffs will receive distributions from the settlement  
21 proceeds calculated in the same manner as the distributions to other Class Members.  
22 In making its determination, the Court should weigh the benefits that the settlement  
23 will realize for the class against the uncertainty of litigation and the possibility that  
24 the class members would obtain no relief in the absence of a settlement. *See Linney v.*  
25 *Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“...it is the very  
26 uncertainty of outcome in litigation and avoidance of wasteful and expensive  
27 litigation that induce consensual settlements.”).

28        Throughout this litigation, Plaintiffs have argued that Defendant should be

1 liable for all claims raised in the operative complaints. Defendant, on the other hand,  
2 has steadfastly maintained that it paid its employees properly and fairly under  
3 California law. This settlement represents a substantial recovery for the Class, and a  
4 well-crafted compromise of the divergent positions of the parties. Further, the  
5 settlement has been reached after considerable negotiation, involving the efforts of a  
6 highly experienced mediator. Each side evaluated the strengths and weaknesses of  
7 their case and independently came to the conclusion that this settlement represents a  
8 responsible means of addressing Plaintiffs' claims and Defendant's defenses.

9 **VI. NATURE AND METHOD OF CLASS NOTICE**

10 "For any class certified under Rule 23(b)(3), the court must direct to Class  
11 Members the best notice practicable under the circumstances, including individual  
12 notice to all members who can be identified through reasonable effort." Fed. R. Civ.  
13 P. 23(c)(2)(B). Here, the parties have agreed upon a Notice which will be mailed to  
14 all last known addresses in the Defendant's records, updated as necessary. This is the  
15 most efficient and effective method for notifying class members.

16 As for the content of the notice, the proposed Notice meets all of the criteria set  
17 forth in Rule 23(c)(2). It informs prospective class members of (i) the nature of the  
18 action; (ii) the definition of the class certified; (iii) the class claims, issues, or  
19 defenses, and the settlement class period; (iv) that a class member may enter an  
20 appearance through counsel if the member so desires; (v) that the court will exclude  
21 from the class any member who requests exclusion; (vi) the time and manner for  
22 requesting exclusion; and (vii) the binding effect of a class judgment on class  
23 members under Rule 23(c)(3). It also informs them of their right to object, and how to  
24 do so. Plaintiffs ask that the Notice be approved.

25 **VII. CLAIMS ADMINISTRATION**

26 The Parties have agreed to the appointment of CPT Group, Inc. as the  
27 Settlement Administrator. CPT is an experienced class administration company, and  
28 has acted as claims administrator in numerous wage and hour cases throughout the

1 country. (Saltzman Decl. ¶ 28). CPT has provided an estimate that its expenses will  
 2 not exceed \$120,000.00, for all the settlement administration tasks.

3 **VIII. ATTORNEYS' FEES AND COSTS**

4 The Settlement Agreement contemplates that Class Counsel will apply to the  
 5 Court for an award to be paid from this common fund, in an amount not to exceed  
 6 one third (1/3) of the Settlement Amount, as well as costs and expenses not to exceed  
 7 \$150,000.00. Collectively, the various Plaintiffs' Counsel have spent over seven  
 8 thousand (7,000) hours for a combined lodestar that will be in excess of  
 9 \$4,250,000.00. (Saltzman Decl. ¶ 48). Although only preliminary, the estimates  
 10 provided by Plaintiffs' Counsel demonstrate that the final lodestar, plus a very  
 11 modest multiplier of only about 1.6, will equal the percentage of the fund request of  
 12 one-third of the total non-reversionary fund recovered for the class. The total hours  
 13 expended also demonstrate the incredible amount of resources and time devoted by  
 14 counsel to litigate and reach the settlement herein, all the while working on a  
 15 contingency fee basis and risking no recovery at all.

16 The request for this award is clearly set forth in the proposed Notice. Class  
 17 Counsel shall also file a motion for attorneys' fees and costs and request for  
 18 Representative Plaintiffs' Service Awards so as to timely apprise Class Members as  
 19 to the manner and nature of the fees and costs incurred before the Response Deadline.

20 Class Counsel recognize that the "benchmark" for fee awards in this district is  
 21 25%. In this case, at the appropriate time in connection with the motion for approval  
 22 of attorneys' fees, counsel will explain the many reasons why this settlement justifies  
 23 the additional amount requested, including consideration of the long and winding  
 24 path followed to reach this settlement, the critical importance of this case and the  
 25 published decision of the Ninth Circuit issued herein, the very large settlement  
 26 payment, the average amounts being awarded especially when considered from the  
 27 "full time equivalent" employee perspective, and the fact that the settlement involves  
 28 a completely non-reversionary payment under which absolutely no claim forms of

1 any kind are required of any of the class members. At this time, it is requested only  
 2 that the Court preliminarily approve the one third fee request so that it may be  
 3 included in the Notice to be mailed to the class members, so that they may comment  
 4 on that aspect of the settlement should they so desire.

## 5 **SIX. SERVICE AWARD FOR NAMED PLAINTIFFS**

6 The *Abdullah* Plaintiffs will each seek Service Awards of \$15,000.00 each, and  
 7 the representative *Stone* Plaintiff shall seek a Service Award of \$5,000.00. The  
 8 request for this award is properly disclosed in the proposed Notice. “[N]amed  
 9 plaintiffs... are eligible for reasonable incentive payments.” *Staton v. Boeing Co.*,  
 10 327 F.3d 938, 977 (9th Cir. 2003). The district court must evaluate individual awards  
 11 using “relevant factors includ[ing] the actions the plaintiff has taken to protect the  
 12 interests of the class, the degree to which the class has benefitted from those  
 13 actions,...the amount of time and effort the plaintiff expended in pursuing the  
 14 litigation...and reasonabl[e] fear[s of] workplace retaliation.” *Id.*, citing *Cook v.*  
 15 *Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). Service Awards should also  
 16 compensate for risks taken, such as possible future retaliation, discrimination, trouble  
 17 finding employment, and significant financial risk.

18 Here, the Class Representatives were not simply bystanders in the prosecution  
 19 of this Action. From the time that the action was first brought to the attention of  
 20 counsel and the representatives met with them, through the present, they have been  
 21 actively involved in providing information and evidence. (*See* Saltzman Decl. ¶ 32).  
 22 The same is true of Mr. Stone, who brought the PAGA action that has added to the  
 23 total recovery. The Class/PAGA Representatives were always available to consult  
 24 with, and regularly did consult with counsel. (*Id.*). The Class/PAGA Representatives  
 25 were also actively involved in discussions regarding the resolution of this matter and  
 26 approved the Settlement terms on behalf of themselves and the Class Members. (*Id.*).  
 27 Moreover, the Class/PAGA Representatives will also be called upon to agree to  
 28 releases of a broader scope than that required of the Class Members. Finally, in

1 taking the lead for the benefit of the Class Members, these representatives have  
2 exposed themselves to the possibility of facing problematic hiring in the future from  
3 any other potential employers who might do simple “Google” searches of all job  
4 applicants, and who might therefore learn that they stood up to a prior employer by  
5 filing a class action.

6 The named Plaintiffs will file their motion for this enhancement in a timely  
7 manner such that Class Members will have access to the motion for at least fourteen  
8 (14) day prior to the deadline for them to decide whether to object or opt out.

9 **X. THE REST BREAK AND OFF THE CLOCK CLAIMS SHOULD BE  
10 PRELIMINARILY CERTIFIED FOR SETTLEMENT PURPOSES**

11 Most of the claims subject to this proposed settlement were previously certified  
12 by the Court in its original certification order issued on January 11, 2011. Two  
13 claims now being settled, the rest break and the off the clock claims, were denied  
14 certification at that time. For purposes of this global settlement, and to afford the  
15 Defendant the broad litigation relief and peace it seeks by way of the very substantial  
16 settlement payment agreed to herein, the Parties have agreed to include those claims  
17 within the settlement parameters, and have bargained for those claims, as valued  
18 above. Accordingly, for the reasons outlined here, the parties seek preliminary  
19 certification of the rest break and off the clock claims, which have been included in  
20 the class definition referred to throughout this motion. Recognizing the fact that the  
21 original class members who received class notice in 2015 as described above would  
22 not have had the opportunity to opt out of these two claims, they are being provided a  
23 class notice which enables them to opt out of these claims, but still includes them in  
24 the settlement of the claims previously noticed to them. As for those class members  
25 who first became employees and thus putative class members following the original  
26 notice being mailed in 2015, they will be receiving a second version of the class  
27 notice, attached to the Saltzman declaration as Exhibit 2, which entitles them to opt  
28 out of object to the entire settlement, since this is their first notice of the same.

1           **A. Fed.R.Civ.P. 23 (a) Requirements Are Met for the Settlement Class**

2           Rule 23 plaintiffs must show the four requirements of Rule 23(a) -  
3 (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy, *United Steel,*  
4 *Paper & Forestry, Rubber, Mfg. Energy v. ConocoPhillips Co.*, 593 F.3d 802, 806  
5 (9th Cir. Cal. 2010) as well as one of the requirements of Rule 23(b). In this case, the  
6 Parties agree to certification of the Settlement Class, for settlement purposes, under  
7 Rule 23(b)(3) which has the added requirement of “predominance.” *Id.*

8           1. Numerosity

9           Defendant’s records reveal that there are over 5,000 class members in the four-  
10 year look back period for the two claims addressed herein, such that numerosity is  
11 easily established. (Saltzman Decl. ¶ 46).

12           2. Commonality

13           Rule 23(a)(2) requires that “there are questions of law or fact common to the  
14 class.” The Ninth Circuit has held that commonality exists “where the lawsuit  
15 challenges a system-wide practice or policy that affects all of the putative class  
16 members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. Cal. 2001).

17           Here, Plaintiffs challenge Defendant’s company-wide practice of allegedly not  
18 providing compliant rest breaks to the guards, and of requiring off the clock travel  
19 time on the guards, thus triggering unpaid time. These alleged practices result in  
20 common questions as to the effected class members, well suited to certification.

21           These common issues satisfy Rule 23(a)(2)’s requirements. *See, e.g., Tierno v.*  
22 *Rite Aid Corp.*, 2006 WL 2535056 (N.D. Cal. Aug. 31, 2006) (certifying a class of  
23 retail store managers with common wage and hour claims).

24           3. Typicality

25           Rule 23(a)(3) requires that “the claims or defenses of the representative parties  
26 are typical of the claims or defenses of the class.” This requirement is “permissive”  
27 and requires only that the representative’s claims are reasonably related to those of  
28 the absent class members. *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. Cal.

1 2010). That test is easily met here, for all the reasons stated.

2           4. The Adequacy Requirements Are Satisfied

3           Adequacy was already found by the Court when it originally certified the other  
4 claims in the case. That finding can only have been reinforced since then by virtue of  
5 the ability of Class Counsel and the Representatives to see the case through the  
6 appellate proceedings, the post-certification discovery and merits battles and reach  
7 the point of now presenting a proposed non-reversionary settlement in the amount of  
8 \$21,000,000.00. They should once again be found “adequate” without question.

9           B. **The Fed.R.Civ.P 23(b) Standards Are Satisfied**

10           1. Common Issues Predominate

11           In addition to the Rule 23(a) requirements, a district court must also find that  
12 common issues of law or fact “predominate over any questions affecting only  
13 individual members.” Fed. R. Civ. P. 23(b)(3). The proposed Class Members in this  
14 case are sufficiently cohesive to warrant adjudication by representation. *See Comcast*  
15 *Corp. v. Behrend*, 133 S. Ct. 1426, 1436 (2013).

16           ***The Rest Break Claims*** – The California Supreme Court in *Augustus v. ABM*  
17 *Security*, (2016) 2 Cal. 5<sup>th</sup> 257, a very recent decision, directly addressed and  
18 approved of certification and liability of rest break claims in regard to security  
19 guards. In that case, the guards were required to carry pagers with them throughout  
20 their rest breaks, with the Court then finding that no lawful rest breaks could occur  
21 under those facts. While Plaintiffs in this case cannot claim that very limiting fact  
22 exists, it was and is alleged herein that the freedom of movement of the guards was  
23 restricted during their rest breaks. There was no one available to “spell” them, so if  
24 they left their post, the post was effectively left unguarded. This put immense  
25 pressure on the guards to stay at their posts during the supposed rest breaks, such that  
26 the Supreme Court’s logic in the *Augustus* case can certainly be said to apply.

27           Accordingly, at the time this matter went to mediation, Plaintiffs advised that if  
28 the case did not settle, they intended to seek to have the rest breaks re-visited for

certification purposes, hoping to bring that claim back in. Thus, that claim was rolled in for the most recent four years, thus setting aside the entire question of whether or not a renewed certification would “relate back” and enabling its resolution.

**The Off The Clock Claims** - Plaintiffs alleged unpaid off the clock time for time spent by Class Members when travelling to/from worksites during their shifts. It was learned in discovery that in fact this was a rare occurrence, but to the extent that it did occur, it is certainly a just and certifiable claim, although manageability at trial could be difficult given the lack of repeated events. But as “manageability” for trial purposes, as discussed below, can be overlooked when addressing certification for “settlement purposes”, it is submitted that it is fully appropriate to certify this claim for settlement, and to include it in the scope of the settlement.

## 2. The Class Action Device Is Superior to Other Available Methods of Adjudication

The class action device proposed herein is “superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). Provisional certification of these two claims will allow them to be fairly, adequately, and efficiently resolved at this time, in conjunction with the other certified claims. As in *Hanlon*, the alternative methods of resolution are individual claims for a relatively small amount of damages. *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1019-20 (9th Cir. 1998). These claims “ ‘would prove uneconomic for potential plaintiffs’ because ‘litigation costs would dwarf potential recovery,’ ” *Id.* at 1023, especially where the primary claims are being settled and released. Standing alone, these two claims are just not likely to ever be asserted.

### 3. No Manageability Issues Preclude Certification

Finally, no issues of manageability would preclude certification of these two additional claims for settlement. A court faced with a request for a settlement-only class need not inquire whether the case would present problems of trial management, even though other requirements under Rule 23 must still be satisfied. *See, e.g.*,

1 *Lazarin v. Pro Unlimited, Inc.*, 2013 WL 3541217, \*5 (N.D. Cal. 2013). Given the  
2 settlement, no trial will occur and thus trial management is not a consideration.

3 **XI. CONCLUSION**

4 The parties have reached this settlement following extensive litigation and  
5 arm's-length negotiations. Plaintiffs request that the Court grant preliminary  
6 approval of the proposed settlement and enter the proposed Preliminary Approval  
7 Order submitted herewith, and any additional relief as this Court should deem proper.

8  
9 DATED: June 23, 2017

**MARLIN & SALTZMAN, LLP**

10 By: s/ Stanley D. Saltzman

11 Stanley D. Saltzman  
12 Cody R. Kennedy  
13 Attorneys for Plaintiff  
and Plaintiff Class

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY**  
**APPROVAL OF CLASS ACTION SETTLEMENT** was filed electronically with  
the Clerk of Court at my direction using the CM/ECF system, which will send  
notification of such filing to all counsel of record on the 23rd day of June, 2017.

By: s / Stanley D. Saltzman  
Stanley D. Saltzman